

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MICHELE L DUNCAN
Claimant

APPEAL NO. 12A-UI-10173-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

OC: 07/29/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Michele Duncan, filed an appeal from a decision dated August 17, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 17, 2012. The claimant participated on her own behalf. The employer, Grandview Heights, participated by Administrator Chris Wolf.

ISSUE:

This issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Michele Duncan was employed by Grandview from February 7, until July 27, 2012 as a full-time CNA. She received a verbal and a written warning on May 17, 2012, for absences in April 2012. She was moved from the night shift to the evening shift in order to alleviate the attendance problems.

The next level of discipline was issued on June 12, 2012, at which time she was placed on a 90-day probation. The written warning, which she signed, stated any more absences during the probation period would be grounds for discharge.

Ms. Duncan called in absent on July 15, 2012 because her mother was hospitalized. The mother had fallen at home, where she had an in-home health care aide who called the ambulance and notified another family member. The other family member notified Ms. Duncan who went to the hospital early in the morning. The mother was competent to make her own medical decisions and was being cared for by the hospital staff. Ms. Duncan could have made it to work for her 2:00 p.m. start time but did not.

On July 27, 2012, the claimant was discharged for the absence on July 15, 2012 because she had accumulated 21 points as of that date, although discharge may occur at 18 points under company policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant had been advised her job was in jeopardy as a result of her ongoing absenteeism. The final occurrence on July 15, 2012, was not an actual emergency because her mother had only fallen, not sustained an injury, and was being cared for by the hospital staff. Ms. Duncan's presence was in the form of a visit rather than as a caretaker. This means the absence must be considered unexcused.

Nonetheless, 871 IAC 24.32(8) requires there to be a current, final act of misconduct which precipitates the decision to discharge. In this matter the employer allowed 12 days to pass between the final occurrence and the discharge. Given that the claimant, the administrator and the human resources office are all in the same facility, no good explanation was provided for this delay. As the final occurrence was so far removed from the discharge, the administrative

law judge cannot conclude it is a “current” act of misconduct. For this reason alone, disqualification may not be imposed.

DECISION:

The representative’s decision of August 17, 2012, reference 01, is reversed. Michele Duncan is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css